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I. LAND AND PEOPLE

A. People

1. According to the most recent national census held in 1991, the population of Argentina was 32,615,528. The National Statistics and Census Institute (INDEC) estimates that the current population (October 1995) is 34,586,635. It is projected that the population will be 37 million by the year 2000, and 41 million by the year 2010.

2. Women outnumber men and represent 50.91 per cent of the population. The proportion of children under the age of 15 is 28.72 per cent; persons over 65 account for 11.32 per cent. The median age of the population was 27.2 years in 1990 and is projected to be 27.8 years by the year 2000.

3. The urban population, urban areas being defined as those with 2,000 inhabitants or more, represented 88 per cent of the total in 1995 and is expected to reach 91 per cent by the year 2010. Argentina is currently the third most urbanized country in Latin America, after Venezuela and Uruguay. The urbanization process has been characterized by a strong concentration of population in the Buenos Aires Metropolitan Area (AMBA), which has begun to decelerate since the middle of the century: in 1947, 47.6 per cent of the urban population lived in the AMBA, but by 1991 that proportion had fallen to 39.7 per cent.

4. Spanish is the official language of Argentina. In addition, various other languages are used by indigenous communities.

5. Without prejudice to the recognition of freedom of worship in the first Argentine Constitution, that of 1853, it can be said that Argentina is basically a Catholic country owing to its historical and cultural traditions. Article 2 of the current Constitution accordingly states that "the National Government supports the Apostolic Roman Catholic faith", referring to the financial support given to the institutions of the Apostolic Roman Catholic Church.

6. The Department of Worship, which forms part of the Ministry of Foreign Affairs, International Trade and Worship, keeps a National Registry of religions, which lists the religious entities or organizations that are allowed to engage in activities within the national territory. The following provisional classification has been used for the main religious groups which exist in Argentina:

(a) Eastern Orthodox Churches (Armenian Apostolic Church and Orthodox Syrian Church of Antioch) and Orthodox Churches (Churches of the Patriarchates of Constantinople, Antioch and Moscow; Russian Orthodox Church Outside Russia; Churches of Serbia and Romania);

(b) Reformed churches and church communities: Anglican; Lutheran; Calvinist (Reformed, Presbyterian and Waldensian); Revivalists; Baptists, many of whose communities are grouped together in the Baptist Evangelical Convention; Methodists (mennonites); Free Evangelical Churches (biblical

fundamentalism); Free Churches (Salvation Army, Church of the Brethren, Church of Christ) and Pentecostals (Assemblies of God, Biblical Assemblies, Foursquare Gospel Church, Argentine Pentecostal Evangelical Church, the Church of God, etc., many of which belong to the Pentecostal Evangelical Confederation;

(c) Para-Christian churches or communities: Christian Scientists, the Church of Jesus Christ of Latter-Day Saints (Mormons) and Jehovah's Witnesses;

(d) Various forms of judaism: Orthodox, Conservative, Reformed (including Shuba Israel, Jewish Congregation of Argentina, Congregation Emanu-El, Congregation Beth-El, Sephardic Jewish Association Temple of Peace, and Jewish associations in the interior. Many of them belong to the Argentine Jewish Mutual Association;

(e) Islamic Communities, associated with the Islamic Centre;

(f) Buddhist groups;

(g) Asian syncretist movements (including Baha'is, World Unification Church or Church of the Reverend Moon, Messianic) or Afro-Brazilian syncretist movements (Umbandas);

(h) Spiritualist religions;

(i) Others, including Rosacrucians and Theosophists.

7. Many of the religious groups listed in (b) above belong to such organizations, federations or confederations as the Consultative Council of Churches, the Argentine Federation of Evangelical Churches, the Christian Alliance of Evangelical Churches of Argentina and the Latin American Evangelical Confederation. At the international level, most of the Orthodox and Eastern Churches and many of the Reformed Churches are members of the World Council of Churches. There are bilateral commissions for dialogue between the Orthodox and Eastern Churches and those affiliated with the main Protestant denominations and the Catholic Church.

B. Demographic data

8. According to 1991 data, life expectancy in Argentina was 71.93 years. Women usually live longer than men, with a life expectancy of 75.59 years as opposed to 68.44 for men. This gap increased until 1985, following which it has stabilized at about seven years.

9. The total fertility rate in Argentina, according to the 1991 national population and housing census, was 2.85 children per mother. Argentine women have an average of 1.75 births during their child-bearing years, but the rate is greater in rural areas, with an average of 2.40 births, than in urban areas, where the figure is 1.67 births.

10. The crude death rate in 1993 was 7.9 per 1,000, the same as in 1992. The infant mortality rate was 22.9 per 1,000 live births. The maternal

mortality rate for 1992 was 4.8 per 10,000 live births. Most deaths occurred in women aged 35 or over (rate above 10, reaching 12.1 per 10,000 in the 40 to 44 age group), but were also high in women under 15 (9.3 per 10,000 live births).

11. According to the 1991 census, there were 8,515,441 households in Argentina, with an average 3.6 persons per household. About 81.5 per cent of these were families. The proportion of women heads of households was 22.3 per cent increasing to about 32 per cent in the Federal Capital. Some 13.3 per cent of households consisted of one person; of these, 55 per cent were women living alone, most of them over the age of 65.

C. Socio-economic indicators

12. According to provisional findings of the continuing household survey carried out by the National Statistics and Census Institute in October 1995, the overall unemployment rate was 17.4 per cent, which represents a decline from the record May 1995 figure of 20.2 per cent.

13. The activity rate grew again from 43.1 per cent in October 1994 to 44.2 per cent in October 1995, but the decreasing demand for labour led to an increase in the unemployment rate. The reduced demand was reflected in a declining employment rate (share of employed persons in the total population), which dropped from 37.4 per cent in October 1994 to 36.5 per cent, according to data from the continuing household survey conducted in October 1995.

14. The first six months of 1995 showed a cumulative retail inflation rate of 1.1 per cent, while wholesale prices grew by about 4.4 per cent. Following a 3.2 per cent increase in the gross domestic product (GDP) during the first quarter of 1995 over the same period of the previous year, the second quarter witnessed a sharp decline in production as a result of the credit shortage and its effects on the payments chain. GDP declined by 3.7 per cent, according to provisional estimates.

15. In 1991, according to the national census, 19.9 per cent of the population (1,410,876 households) were living in households where their basic needs were unmet.

16. Again according to the 1991 census, only 4 per cent of the population aged 15 or over declared themselves illiterate, 35 per cent less than in 1980. However, in the least developed provinces the illiteracy rate was 10 per cent. The proportion of the population aged 15 or over who had never attended school or had not completed the third level of primary school was 12.2 per cent, but that proportion was three fourths in the least developed provinces.

17. Of the total population aged 15 or over, 22.9 per cent had not completed primary school, while 32.3 per cent had. 12.2 per cent of the population had completed secondary school and 18.9 per cent had reached secondary level but had not completed it. Only 13.7 per cent had attained the level of higher or university studies, and 6.3 per cent had completed that level.

18. Of women aged 15 or over, 3.8 per cent had had no education whatsoever. Only 32.1 per cent had completed primary school and 12.8 per cent secondary school, only 7.1 per cent had completed their university or tertiary studies. Women comprise 52.3 per cent of all students in Argentine universities.

II. GENERAL POLITICAL STRUCTURE

A. The republican form of government

19. The political organization of Argentina is based on the federal republican representative form of government, enshrined in the Constitution adopted at Santa Fe on 1 May 1853 by the General Constituent Congress of the Argentine Confederation. That text was amended in 1860, primarily to incorporate the province of Buenos Aires, which had not been a part of the Argentine Confederation in 1853. In 1949, a Constituent Convention replaced the 1853/1860 text with a new one, which was in turn annulled by the provisional Government through a proclamation of 27 April 1956, restoring the previous text. On 22 August 1994, the National Constituent Convention approved amendments to the Constitution, which came into effect on 24 August 1994. Those reforms are for the most part concerned with the organizational part of the Constitution.

20. The Argentine Republic comprises 23 provinces and the city of Buenos Aires, as follows: Buenos Aires, Catamarca, Corrientes, Córdoba, Chaco, Chubut, Entre Ríos, Formosa, Jujuy, La Pampa, La Rioja, Mendoza, Misiones, Neuquén, Río Negro, Salta, San Juan, San Luis, Santa Cruz, Santa Fe, Santiago del Estero, Tucumán and Tierra del Fuego.

21. Each province enacts its own constitution, by which it must provide for its own administration of justice and municipal autonomy, and regulates the scope and contents of the institutional, political, administrative, economic and financial system. It elects its own authorities: governor, legislators and other provincial officials. Through their local institutions, the provinces enact their own legislation and are empowered to enter into international agreements as long as they are not incompatible with national foreign policy and do not affect either the powers delegated to the Federal Government or the public standing of the Nation. They may also enter into partial treaties concerning the administration of justice, economic interests or mutually beneficial works, after notifying the Federal Congress.

22. The provinces may not: enter into partial treaties of a political nature; enact laws on domestic or foreign trade or navigation; establish provincial Customs houses; coin money; establish banks empowered to issue banknotes, without the authorization of the Federal Government; enact civil, commercial, criminal or mining codes after Congress has approved them; enact laws on citizenship and naturalization, bankruptcy, forgery of State currency or documents; impose tonnage dues; commission warships; or appoint or receive foreign agents.

23. The constitutional legal system created this system of government for the Argentine Nation, as from 1853, based on the separation of the Legislature, the Executive and the Judiciary.

B. The Federal Government

1. The Legislature

24. Under the Constitution, the Legislature comprises a bicameral congress: the Chamber of Deputies and the Senate (art. 44). The Chamber of Deputies is composed of representatives elected directly by simple majority vote of the people of the provinces and the city of Buenos Aires, and of the capital in the event of transfer. All of these are, for this purpose, considered electoral districts of a single State. The number of representatives is one for every 33,000 inhabitants or a number not less than 16,500. After each census, Congress determines representation based on that census, with the power to increase but not decrease the base for each representative (art. 45). Under the revised text of 1994, the city of Buenos Aires acquired autonomy, being empowered to designate its own representatives even if the Federal Capital is moved elsewhere. The deputies hold office for four years and may be re-elected; but half of the membership of the Senate is renewed every two years (art. 50).

25. The Constitution in force until 24 August 1994 provided that the Senate was composed of two senators for each province, elected by majority vote of their legislature, and two for the Federal Capital, elected by an electoral college. The Senate currently consists of three senators for each province and three for the city of Buenos Aires, elected directly and jointly, with two seats going to the political party that obtains the largest number of votes and the rest to the political party receiving the next largest number. Each senator has one vote (art. 54). A transitional provision stipulates that the current members of the Senate shall remain in office until the end of their respective mandates.

26. As a result of the reform, senators hold office for six years and can be re-elected indefinitely, but the Senate has to renew itself by one third of the electoral districts every two years (art. 56). Until now, the term of office was nine years and renewal occurred every three years. A transitional provision stipulates that, in the two months preceding 10 December 2001, all members of the Senate shall be elected in the manner indicated, it being decided by lottery at a meeting at which they are all present which of them shall leave office in the first and which in the second biennium.

27. The preparation and approval of laws is a function which, through the procedures laid down in the Constitution, is the responsibility of the Legislature. Another function of Congress is to declare a state of siege in one or more parts of the country in the event of internal disturbance, and to approve or suspend a state of siege declared by the Executive when Congress is in recess.

28. The constitutional reform in effect since 24 August 1994 brought the Office of the Auditor General of the Nation and the Ombudsman into the realm of the Legislature. The Office of the Auditor General is a technical assistance body of Congress, with functional autonomy, established to ensure external control of the national public sector in the area of resources and economic, financial and operational matters, as a specific function of the Legislature (art. 85). The Office of the Ombudsman is an independent body

instituted within the ambit of Congress, with full functional autonomy and a mandate to defend and protect human rights and other rights, guarantees and interests safeguarded by the Constitution and the law, with regard to decisions, acts or omissions of the Administration (art. 86).

2. The Executive

29. The National Executive Power is exercised by a citizen with the title of "President of the Argentine Nation" (art. 87). The reform abolished the requirement that that person must "belong to the Apostolic Roman Catholic Church".

30. In conformity with the new Constitution, the President and Vice-President hold office for a term of four years and may be re-elected or succeed one another for a single consecutive term. If they have been re-elected or have succeeded one another, they may not be elected to either of these offices until one term of office has elapsed (art. 90). A transitional provision states that, for the purposes of that article, the term of the President holding office at the time the reform was approved must be considered as a first term. Prior to the reform, the presidential term was six years, with the possibility of re-election after one intervening term. Also under the reforms, the President leaves office the day the four-year term ends, and no event that may have interrupted his term may be considered a ground for completing it later (art. 91).

31. In the event of illness, absence from the capital, death, resignation or removal of the President from office, the executive power is exercised by the Vice-President. In the event of the removal, death, resignation or disability of the President and the Vice-President, Congress determines which official shall act as President until the disability has ceased or a new President has been elected (art. 88).

32. The procedure for the election of the President and Vice-President by an electoral college (indirect election) provided for in the 1853 Constitution was changed. The new text provides that both are to be elected directly by the people in two rounds, the national territory being considered as a single district (art. 94). The election takes place within the two months prior to the conclusion of the term of the serving President (art. 95). If a second round of voting is necessary, it is held between the two slates of candidates receiving the most votes, within 30 days of the first round (art. 96). There is no second round if the slate receiving the most votes in the first round obtains more than 45 per cent of the valid votes (art. 97) or if it receives at least 40 per cent of such votes and at least 10 percentage points more than the valid votes cast for the second-ranking slate (art. 98).

33. The reform created the office of Chief of the Cabinet of Ministers, who reports to Congress and undertakes the overall administration of the country through the acts and regulations necessary for that purpose and those delegated to him by the President, with the approval of the Secretary-Minister of the relevant department. He coordinates, prepares and convenes meetings of the Cabinet of Ministers, presiding over them in the President's absence. He must attend Congress at least once a month, alternating between the two Chambers, to report on the progress of government, and he may also be

expressly called or summoned by an absolute majority vote of all the members of either Chamber. Once Congress is in session, he, together with the other Ministers, presents a detailed report on the state of the Nation relating to the affairs of the various departments. He also produces any oral or written reports and explanations that either Chamber may request of the Executive, and is entitled to attend the sessions of Congress and participate in its deliberations without the right to vote. He countersigns decrees by which the powers delegated by Congress are exercised, subject to the control of the Standing Bicameral Commission. Along with the other Ministers, he also countersigns decrees of necessity or emergency and decrees by which laws are partially promulgated, personally submitting them, once they have been approved, for consideration by the Standing Bicameral Commission (arts. 100 and 101).

3. The Judiciary

34. Judicial power is exercised by the Supreme Court of Justice and other lower courts established by Congress within the national territory (art. 108). In no circumstances may the President exercise judicial functions, assume jurisdiction over pending cases or reopen cases that have been closed (art. 109).

35. Prior to the reforms, judges were appointed by the Executive with the approval of the Senate. In future, appointments will be based on a binding list of three candidates proposed by the Council of the Magistrature (art. 114). This Council will be reconstituted periodically in such a way as to achieve balanced representation of the political bodies resulting from the popular election, judges from all the courts, and lawyers on the federal register, as well as other persons from the academic and scientific fields, the size and structure of the Council being spelled out in the special law establishing it.

36. The judges of the Supreme Court and lower courts retain their posts as long as they maintain a good standard of conduct (art. 110). They may be removed from office by the decision of an impeachment jury composed of legislators, magistrates and registered lawyers (art. 115), on grounds of poor performance or professional misconduct or for ordinary offences (art. 53).

37. It is the responsibility of the Supreme Court and lower courts to hear and decide all cases relating to matters governed by the Constitution, the laws of the Nation or treaties with foreign nations; the Supreme Court exercises jurisdiction over appeals in accordance with the rules and exceptions prescribed by Congress.

38. The foregoing notwithstanding, the Supreme Court has primary and exclusive competence in: cases concerning ambassadors, government procurators and foreign consuls; cases involving the admiralty and maritime jurisdiction; matters in which the Nation is a party; and cases arising between two or more provinces, between one province and the residents of another province, between the residents of different provinces, and between one province and its residents against a foreign State or citizen.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Legal framework

39. The legal system in force in Argentina is composed of legal provisions with their own rank and different fields of validity; all conform with the standards set out in the Constitution.

40. Competence to conclude treaties lies with the Executive (Constitution, art. 99, para. 11). None the less, between the signing of a treaty and the declaration of consent to be bound thereby, the Constitution provides for a substantive formality to be performed by the Legislature, "to approve or reject treaties concluded with other nations and with international organizations" (art. 75, para. 22), which concerns the principle of the separation of powers and its correlative checks and balances. This procedure guarantees the participation of the representatives of the people and of the provinces in decision-making on matters which will be binding on the country.

41. Article 31 of the Constitution, which was not amended, establishes that treaties are the supreme law of the nation. The Supreme Court, the authentic interpreter of the constitutional provisions, has undertaken an exegesis of the provisions relating to treaties, from them it has concluded that they are equal in rank to national laws. This jurisprudence, which was expressed in the Martin and Company v. General Ports Administration decision of 1963, was uncontested until 1992.

42. On 7 July 1992, the Supreme Court handed down its judgement in the Ekmekdjian v. Sofovich case, ruling that "when the Nation ratifies a treaty which it has signed with another State, it is making an international commitment that its administrative and jurisdictional bodies will apply that treaty to the cases covered thereby, provided that it contains sufficiently specific descriptions of such cases to permit its immediate application" (Act 1992/C:547). This decision had the merit of recognizing that, as of 7 July 1992, treaties have taken precedence over national legislation in Argentina, thereby eliminating any legal conflicts which jeopardized the international responsibility of the State whenever a subsequent law contradicted an earlier treaty.

43. Furthermore, it should be pointed out that the Supreme Court has adopted the constant and unchanging position, that treaties may not be assimilated to the instrument by which they are approved, nor are they reducible to any other source, i.e. the law applicable by the courts is international law. The Supreme Court has stated that a treaty "acquires legal validity by virtue of the law by which it is approved, but that does not mean that it ceases to have the character of an autonomous legal statute, the interpretation of which depends on its own text and nature, regardless of the law by which it was approved" (decisions 202:353).

44. Article 75, paragraph 22, of the new Constitution, which has been in effect since 24 August 1994, provides that:

"... treaties and agreements take precedence over laws.

In the conditions of their validity, the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child, have constitutional rank, do not abrogate any article of the first part of this Constitution, and must be interpreted as complementary to the rights and guarantees recognized thereby. They may be denounced, if necessary, only by the Executive, following approval by two thirds of the members of each Chamber.

After being approved by Congress, other treaties and conventions on human rights shall require the vote of two thirds of the members of each Chamber in order to acquire constitutional rank."

45. Likewise, in conformity with articles 116 and 117 of the Constitution, the Supreme Court has ruled that international custom and the general principles of law - the sources of international law, in accordance with article 38 of the Statute of the International Court of Justice - directly constitute the legal system. In a number of cases, therefore, the Supreme Court has upheld the "law of peoples" and the "general principles of international law" in applying various rules of international law.

B. Competent authorities

1. Judicial authorities

46. Under the Argentine legal system, the administration of justice is a power shared by the Nation and the provinces. Articles 5 and 123 of the Constitution provide that each province shall enact its own constitution in accordance with the principles, declarations and guarantees of the supreme law, "which ensures its administration of justice". The provinces elect their own officials and judges, without intervention by the Federal Government (art. 122). At the same time, article 31 of the Constitution provides that the Constitution itself, the laws enacted by Congress in pursuance thereof, and treaties with foreign Powers are the supreme law of the Nation, and the authorities of each province are bound thereby, notwithstanding any provision to the contrary which the provincial laws or constitutions may contain.

47. The Judiciary of each province is responsible for the administration of ordinary justice within that province's territory, applying the codes mentioned in article 75, paragraph 12, namely, the Civil, Commercial, Criminal, Mining, Labour and Social Security Codes - depending on the jurisdiction under which matters or persons lie.

48. As to national justice, under article 116 of the Constitution the Supreme Court and the lower courts hear and decide all cases relating to matters governed by the Constitution and the laws of the Nation, except those matters falling to the provincial jurisdictions. In these cases, according to article 117, the Supreme Court exercises jurisdiction over appeals.

2. Administrative authorities

49. At the national level, two human rights offices have been established within the Executive, one in the Ministry of the Interior and the other in the Ministry of Foreign Affairs, International Trade and Worship. This preliminary organizational structure has recently received substantial support, enhancing and diversifying the possibilities of guaranteeing full observance of human rights in Argentina.

Office of the Under-Secretary for Human Rights within the Ministry of the Interior

50. By Decree No. 3090/1984, the Office of the Under-Secretary for Human Rights was established within the Ministry of the Interior. Its essential function is the promotion and protection of human rights in Argentina. The Office of the Under-Secretary for Human and Social Rights, as it is now called, currently carries out the following activities and programmes:

Complaints and procedures programme, consisting of the receipt of complaints from individuals relating to conflicts which may constitute violations of human rights; it assists complainants and forwards cases to the competent national authority;

Legislation drafting programme: participates in and assists the congressional human rights commissions and, during 1996, the National Constituent Convention;

Institutional relations programme, intended to promote and maintain smooth relations with public and private national organizations and foreign organizations working in the field of human rights;

Federal Council of Human Rights, aimed at linking and coordinating policies for the promotion and guarantee of human rights between the Federal Government and the provincial governments, and ensuring efficient coordination and smooth communication to produce a centralized setting for policy-making and decentralized action, taking into account the situation of each province;

Historical reparation programme: the Office of the Under-Secretary for Human Rights is responsible for processing benefits for former detainees of the Executive, civilians tried by military courts prior to the restoration of democracy on 10 December 1993 and the successors of disappeared persons;

National Commission for the Right to an Identity, whose objective is to encourage the search for disappeared children and determine the whereabouts of children of unknown identity who were kidnapped or

disappeared, of children born while their mothers were illegally deprived of their liberty, and of other children who do not know their identity because for various reasons they were separated from their biological parents;

National Commission on the Disappearance of Persons (CONADEP): this body is responsible for the custody and updating of its files;

Child priority programme, the purpose of which is to guarantee the full effectiveness of the rights of the child and promote the necessary actions to comply with the Convention on the Rights of the Child, to encourage a policy for conflict prevention and to develop actions aimed at guaranteeing the rights of street children;

Institute for the Promotion of Human Rights: established with the cooperation of the United Nations Centre for Human Rights to disseminate information and offer training in the field of human rights. Its objectives are to provide documentation, information and training services, encourage research, lend assistance in the field of human rights to relevant sectors, and promote education and dissemination policies directed at the general public.

Office of the Under-Secretary for Human Rights at the international level

51. Decree No. 932 of 11 June 1986 established the Office of the Under-Secretary for Human Rights at the international level which, in its new form, is concerned with human rights and women's rights. Its primary responsibility is to identify, develop and propose plans, programmes, projects and objectives for foreign policy in the field of human rights and the status and situation of women, and to help formulate related foreign policy vis-à-vis international organizations, entities or ad hoc commissions.

52. Through two departments, the Human Rights Department and the Women's Rights Department, the Office of the Under-Secretary for Human Rights within the Ministry of Foreign Affairs, International Trade and Worship participates in action to determine how legislation may be adapted to the international commitments undertaken in the field of human rights, in the signing and conclusion of treaties, in activities to bring about the return of Argentinians residing abroad and in determination of the eligibility of refugees.

53. In providing a medium for and promoting the implementation of international decisions in the field of human rights, this Office has somehow become a mechanism for adapting internal provisions and structures for the purpose of enhanced and more effective observance of human rights in Argentina. The Office has primary competence with regard to Argentina's participation in the meetings of all United Nations bodies.

Government Procurator for the Prison System

54. Also entailing duties at the national level and forming part of the Executive is the office of Government Procurator for the prison system, created by Decree No. 1598 of 29 July 1993, with the rank of Under-Secretary

of State and a renewable four-year term. The Procurator's main function is to protect the human rights of inmates in the federal prison system, as those rights are provided for in the national legal system and the relevant international conventions to which Argentina is a party. In performing his duties, the Procurator is not subject to any binding mandate and may not receive instructions from any authority; he must carry out his tasks independently, according to his judgement, and determines which cases he will pursue.

55. The Procurator's mandate entitles him to make periodic visits to all prison establishments in which national or federal inmates are being held. At his own initiative or on the application of another party, he may investigate any act or omission which may infringe the rights of detainees, and he is obliged to file criminal charges if necessary. His opinions or views become recommendations to the Ministry of Justice, which is responsible for the monitoring and supervision of the national and federal prison system; the recommendations are given effect by the Minister of Justice through administrative decisions.

National Institute to Combat Discrimination, Xenophobia and Racism

56. On 5 July 1995, Congress adopted Act No. 24,515, which was promulgated on 28 July of the same year and established the National Institute to Combat Discrimination, Xenophobia and Racism (INADI), as a decentralized body within the Ministry of the Interior. Its purpose is to develop national policies and practical measures to combat discrimination, xenophobia and racism, and encourage and carry out initiatives to that end. Under Act No. 24,515, the Institute has broad functions: (a) prevention/dissemination: disseminating the principles and legal standards relating to non-discrimination and informing public opinion; (b) education: planning and promoting education campaigns; (c) investigation: receiving, centralizing and recording complaints relating to discriminatory, xenophobic or racist behaviour; (d) services: counselling victims, providing free protection; advising the Public Prosecutor's Office on issues within its purview; (e) documentation: collecting and updating information on relevant domestic, international and comparative law; establishing its own documentation register; (f) cooperation: establishing ties with other bodies sharing the same objectives; and concluding agreements.

57. As regards the presence in Argentina of individuals who, during or after the Second World War, allegedly took part in the extermination of peoples or the killing and persecution of individuals because of their race, religion, nationality or political opinions, the Act provides that the Institute may: verify their presence, promote and institute legal and administrative proceedings when it has sufficient evidence to do so, and propose the signing of new extradition treaties. (It should be noted that by Decree No. 232/92, any reservation for reasons of State which may have applied to documents concerning Nazi criminals was declared null and void, and national organizations possessing such documents were ordered to make them available to the General Archives of the Nation within 30 days).

3. Parliamentary commissions

58. Special forums with competence in the field of human rights have also been established within the context of the Legislature. The Senate, composed of representatives of the 23 provinces and the Federal Capital, in December 1983 set up a Commission on Human Rights and Guarantees. Its example was emulated on 30 September 1992, by the Chamber of Deputies which formed a similar commission. The members of both commissions include parliamentarians from all political parties represented in Congress.

59. The work of these commissions is enriched by the contribution of government officials who are periodically invited to present reports, and of national and international experts. In addition to constituting a natural forum for debate on various subjects which later gives rise to draft laws, these commissions request reports from the Executive on questions within its competence. The provinces have also followed this example, their legislatures having set up their own human rights forums.

4. The Ombudsman

60. On 1 December 1993, Congress adopted Act No. 24,284, by which the Defensoría del Pueblo was established within the ambit of the Legislature. The Defensor del Pueblo, also known as the Ombudsman, carries out his functions without taking instructions from any authority and is mandated to protect the rights and interests of individuals and the community regarding deeds, acts and omissions of the Administration. His duties include the initiation of investigations, either on his own initiative or upon the application of a third party, of acts by the Administration which may infringe those rights and interests, including extended or collective interests.

61. At the municipal level, the City of Buenos Aires had already had experience with a human rights procurator. The Constitutional reform of 22 August 1994 introduced a new article relating to the Ombudsman.

C. Remedies

62. All the inhabitants of Argentina have available to them a number of remedies of various kinds which enable situations in which a fundamental right has been violated to be resolved. These remedies are regulated by ordinary legislation and vary according to their purpose. This fact notwithstanding, the constitutional reform introduced a new article, article 43, which states:

"Any person may initiate prompt and rapid amparo proceedings provided no other more appropriate judicial remedy exists, against any act or omission by public authorities or private individuals which actually or potentially infringes, restricts, jeopardizes or threatens rights and guarantees recognized by this Constitution, a treaty or a law, in a manifestly arbitrary or illegal manner. In such instances, the judge may declare unconstitutional the provision on which the injurious act or omission is based.

This action may be taken against any form of discrimination and in regard to the rights that protect the environment, competition, users and consumers, as well as collective rights in general, by the party concerned, the Ombudsman and associations that share those goals and are registered in accordance with the law, which shall determine the conditions and form of their organization. This action may be undertaken by any person in order to obtain information about the content and purpose of data relating to himself contained in public or private records or data banks intended for reports, and, if the information is false or discriminatory, to demand that it be destroyed, corrected, made confidential or updated. The confidentiality of journalists' sources of information may not be affected.

When the right which has been infringed, restricted, jeopardized or threatened concerns physical liberty, in the event of the illegal worsening of the form or conditions of detention, or in the case of the enforced disappearance of persons, an application for habeas corpus may be filed by the affected party or any person acting on his behalf, and the judge shall hand down a decision immediately, even if a state of siege is in force".

1. Complaints

63. Article 174 of the Code of Criminal Procedure which has been in force since September 1992, states that "Any person who considers himself to have been harmed by an offence prosecutable ex officio or who, while not claiming to have been harmed, learns of such an offence, may file a complaint with a judge, government attorney or the police. When the criminal action is a private action, only the person entitled to bring charges may file the complaint, in conformity with the relevant provisions of the Criminal Code. Subject to the formalities set forth in book I, title IV, chapter IV, the person reporting the offence may ask to be considered as a plaintiff".

64. As to the obligation incumbent on public officials, article 177 of the Code of Criminal Procedure states that "The following have an obligation to file complaints concerning offences prosecutable ex officio: (i) public officials or employees who learn of such offences in the course of their work; (ii) doctors, midwives, pharmacists and other persons engaged in any of the health professions, with regard to offences they learn of while providing their professional services, unless the acts of which they have knowledge are protected by professional secrecy".

2. Amparo proceedings

65. Act No. 16,986 governs amparo proceedings against any act or omission by the public authorities which actually or potentially infringes, restricts, jeopardizes or threatens, in a manifestly arbitrary or illegal manner, the rights or guarantees explicitly or implicitly recognized by the Constitution, with the exception of individual liberty, which is protected by habeas corpus.

66. The cases in which amparo is inadmissible are expressly laid down in article 2 of the above-mentioned Act. These cases are the following:
(a) judicial or administrative resources or remedies exist which enable the

constitutional right or guarantee in question to be protected; (b) the act which is being challenged emanates from a judicial body or has been adopted by express implementation of Act No. 16,970; (c) judicial intervention would directly or indirectly compromise the regularity, continuity and efficiency with which a public service is provided or the performance of essential State activities; (d) the determination of the act's invalidity would require further deliberations or evidence, or a declaration of unconstitutionality of laws, decrees or ordinances; (e) the application was not made within 15 working days of the date on which the act was committed or was to have taken place.

67. The proceedings must be brought before a judge of first instance with jurisdiction in the place where the act occurred, took effect or might have taken effect. If the proceedings are admissible, the judge will order the appropriate authority to prepare a detailed report on the background to and basis for the contested measure, the report to be completed within a reasonable time as determined by the judge (usually five days). When the report has been produced or the time-limit set has expired without its being submitted, and the plaintiff has no evidence to produce, a substantiated decision will be rendered within 48 hours, either to grant or deny amparo.

68. The final decision declaring the existence or non-existence of an arbitrary or manifestly illegal infringement restriction, jeopardization or threat against a constitutional right or guarantee constitutes res judicata with regard to amparo, leaving open the exercise of those actions or remedies other than amparo which may be available to the parties. The only decisions which may be appealed against, are the final decision, the decision by which the proceedings are declared inadmissible and decisions that provide for measures involving no new action or suspending the effects of the contested act.

69. Amparo proceedings against an act or omission by a private individual are governed by article 321 of the Code of Civil and Commercial Procedure, as follows: "The procedure established under article 498 (summary procedure) shall be applicable ... when a claim is made against an act or omission by a private individual which, actually or potentially, infringes, restricts, jeopardizes or threatens in an arbitrary or manifestly illegal manner any right or guarantee explicitly or implicitly recognized by the Constitution, provided that the urgent redress of the injury or immediate cessation of the effects of the act is necessary and, because of its nature, the matter should not be dealt with by any of the procedures established by this Code or other laws".

70. The rules on summary procedure apply to these proceedings with the following modifications: no counterclaims or pleas of previous and special pronouncement are permitted; all time-limits are two days, except if the claim is being challenged, in which case they are five days, and the time-limit for evidence, which is set by the judge; only final judgements and preventive injunctions may be appealed against.

71. Article 28 of the Administrative Procedures Act (No. 19,549), as amended by Act No. 21,686 defines the action for amparo against administrative delay in the following terms: "Any person who was a party to administrative

proceedings may fill a judicial application for an order for prompt action. This order shall be admissible if the administrative authority has allowed the time-limits to expire, and, should there have been no such time-limits, if it has taken a longer than reasonable time to issue either the report or the procedural or substantive decision requested by the party concerned. Once the application has been submitted, the judge shall rule on its admissibility, bearing in mind the circumstances of the case and, if he deems it appropriate, order the administrative authority involved to state the reasons for the alleged delay within the time-limit set by him. The judge's decision shall be final. If the order has been challenged or if the time-limit expires without the above statement being made, the appropriate decision shall be taken with regard to the delay and, if appropriate, an order issued for the administrative authority responsible to take the necessary action within a reasonable period, to be determined in accordance with the nature and complexity of the pending report or procedures."

3. Application for habeas corpus

72. Act No. 23,098 provides that an appeal for habeas corpus is admissible when an act or omission by a public authority is reported and involves:
(i) actual restriction on or threat to freedom of movement, without a written order from a competent authority; or (ii) illegal aggravation of the form and conditions of detention, without prejudice to the powers of the trial judge if there is one.

73. If a person's freedom is restricted owing to the declaration of a state of siege, the aim of the habeas corpus procedure may be to demonstrate in the specific case: (i) the legitimacy of the declaration of the state of siege; (ii) the relationship between the detention order and the situation that gave rise to the declaration of a state of siege; (iii) the illegal aggravation of the form and conditions of detention, which may in no circumstances be served in establishments intended for the enforcement of penalties; (iv) the effective exercise of the right to choose to leave the national territory.

74. In cases of detention, once the complaint has been filed the judge must immediately order the authority summoned, if there is one, to bring the detainee before him with a detailed report on the reasons for the measure, the form and conditions of detention, whether it was carried out by written order from a competent authority - in which case that order should be attached, and whether the detainee was placed at the disposal of another authority, and if so, which authority, for what reason and on what occasion the transfer took place. In cases of actual threat of detention, the judge must order the authority summoned to submit the report.

75. If the competent court or judge learns on the basis of reliable evidence that a person is being held in custody, detention or confinement by an official subordinate to it/him or by a lower-ranking administrative, political or military official and that that person is likely to be transferred out of the territory over which he/it has jurisdiction or made to suffer irreparable injury before he can be assisted by means of a writ of habeas corpus, such a writ may be issued ex officio, ordering the person responsible for the detention or any administrative officer, police officer or other employee, to bring the person detained or threatened with detention before it/him in order to resolve the case according to law.

4. Extraordinary appeal

76. Article 14 of Act No. 48 governs extraordinary appeal to the Supreme Court. It establishes that an appeal can be made against a final judgement in the following cases: (i) where the validity of a treaty, act of Congress or authority exercised in the name of the Nation has been called in question during the proceedings, and the decision has gone against its validity; (ii) where the validity of a provincial law, decree or authority has been called in question on the ground of being contrary to the Constitution, treaties or acts of Congress, and the decision has been in favour of the validity of the provincial law or authority; (iii) where the interpretation of a clause of the Constitution, of a treaty or of an act of Congress, or a task undertaken in the name of the Nation has been challenged and the decision has been against the validity of the deed, right, privilege or exemption based on that clause and which is in dispute.

77. The case law of the Supreme Court has extended extraordinary appeal to cases of arbitrary judgements, in other words, decisions which in some way - for example, by applying laws not in force, by disregarding evidence or by omitting questions that have already been raised - violate the guarantee of the right to a defence.

5. Administrative appeals

78. The Administrative Procedures Act (No. 19,549) governs appeals that may be lodged against decisions by the administration. Such appeals are the application for reconsideration, before the body responsible for the decision appealed against and the hierarchical appeal, lodged before the same authority but which must be resolved by the minister within whose competence the decision was made. The President resolves hierarchical appeals lodged against decisions by his ministers.

6. Systems of compensation

79. Compensation as redress for injury is consequent upon responsibility. As such, it is for the judicial authorities to determine compensation both in criminal proceedings and in other sorts of proceedings.

IV. INFORMATION AND PUBLICITY

80. Argentina is a State party to the following human rights treaties:

Convention on the Prevention and Punishment of the Crime of Genocide;

Geneva Conventions on international humanitarian law;

Additional Protocols to the Geneva Conventions on international humanitarian law;

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;

Convention relating to the Status of Refugees (without any geographical reservations);

Protocol relating to the Status of Refugees;

Convention on the Political Rights of Women;

Convention relating to the Status of Stateless Persons;

Supplementary Convention of the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

Convention against Discrimination in Education;

International Convention on the Elimination of All Forms of Racial Discrimination;

American Convention on Human Rights;

International Covenant on Civil and Political Rights and the Optional Protocol thereto;

International Covenant on Economic, Social and Cultural Rights;

International Convention on the Suppression and Punishment of the Crime of Apartheid;

Convention on the Elimination of All Forms of Discrimination against Women;

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

Inter-American Convention to Prevent and Punish Torture;

Convention on the Rights of the Child;

Inter-American Convention on Forced Disappearance of Persons.

(Other treaties containing human rights clauses and those adopted within ILO are not included.)

81. It should be recalled that, of the above-mentioned instruments, the following have constitutional rank: Convention on the Repression and Punishment of the Crime of Genocide; International Convention on the Elimination of All Forms of Racial Discrimination; American Convention on Human Rights; International Covenant on Civil and Political Rights and the Optional Protocol thereto; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child. The same hierarchical ranking applies to the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights.

82. The National Directorate for Development within the Office of the Under-Secretary for Human and Social Rights (Ministry of the Interior) has specific functions in the field of information, for which purpose it has set itself the following objectives: (a) to promote the inclusion of education on human rights and democracy at all levels of the formal educational system, as support for civic ethics, to guarantee human rights and to prevent violations; (b) to carry out informal human rights education programmes jointly with governmental, non-governmental and international organizations; (c) to train public officials (employees of national and provincial public administrations) in the theoretical and practical aspects of human rights, given that they have operational responsibility for the implementation of public policies; (d) to train police officers and security forces to carry out their work with due respect for the rules and principles laid down by the laws in force and in accordance with the recommendations of the United Nations; (e) to encourage the work of the human rights documentation centre administered by the Directorate; and (f) to promote publications that support the dissemination, theoretical study and teaching of human rights.

83. These activities are without prejudice to any that may be organized and carried out by the various human rights departments in the provinces. In addition it should be noted that various national universities include courses on human rights in their curricula. This is also the case with the curricula of secondary schools administered by the city of Buenos Aires.

84. Disseminating information on human rights is also a major task of the non-governmental community working in that field. There are now a large number of non-governmental organizations (NGOs) working on various issues in Argentina. Many of them are local, while others are national branches of international groups. Several Argentine NGOs have consultative status with the Economic and Social Council of the United Nations.



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GERMANY

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I. COUNTRY AND POPULATION

A. Geography and climate

1. The Federal Republic of Germany has an area of 356,733 km. It stretches from the North Sea and the Baltic Sea to the Alps in the south. Geographically it can be divided into five parts: the North German Plain south of the North Sea and Baltic coasts and the offshore islands, the Mid-German Highlands that separate the north of Germany from the south and are intersected by the Middle Rhine between Mainz and Bonn and the Hessian troughs, the natural guides for north-south traffic, the South-West German terraced highlands, the Southern German Alpine Plateau that covers a wide expanse before the Alps, and the Bavarian Alps between Lake Constance and Salzburg that comprise only a narrow section of the folded mountain range of the European Alps.

2. The Mid-German Highlands reach heights of almost 1,500 m. The highest mountain is the Zugspitze at 2,962 m.

3. Germany's position in the temperate zone is decisive for its climate of frequent weather changes, predominantly westerly winds and precipitation in every season. Progressing from the north-west towards the east and the south-east a gradual transition from an oceanic to a continental climate can be detected. The average temperatures of the coldest month of the year (January) range from + 1.5° C to - 0.5° C in the Plain to below - 6° C in the mountains, depending on the altitude. The average July temperatures are up to between + 17° C and + 18° C on the North German Plain, up to + 20° C in the Upper Rhine Valley. The average annual temperature is + 9° C.

B. Demographic data

Population and balance of migration

4. At the end of 1994 the Federal Republic of Germany had 81,539,000 inhabitants, 201,000 or 0.2 per cent more than at the end of 1993 (81,338,000). In 1993 the increase over the previous year was 363,000 or 0.4 per cent and in 1992 700,000 or 0.9 per cent. The population density remained unchanged in comparison to 1993 at 228 inhabitants per sq km. The easing off in the population increase is a result of a rise in the excess of deaths over births from 99,000 (1993) to 115,000 as well as a fall in the excess of people moving to Germany over those leaving to live abroad from 471,000 (1993) to 330,000.

5. In 1994 774,000 foreigners moved across the Federal borders to settle in Germany (1993: 987,000) and 621,000 left the country (1993: 710,000). The resultant excess of immigration in 1994 at 153,000 fell from 277,000 in 1993, i.e. by 124,000 persons or 45 per cent. The external migration balance of the foreign population in 1994 is principally based on an excess of immigration in comparison to other European countries (+ 111,000) and here in turn in comparison to Bosnia and Herzegovina (+ 52,000), the European Union States (+ 23,000) and Turkey (+ 18,000).

6. In 1994 some 296,000 Germans came to Germany (1993: 281,000). The main countries of origin - as a result of immigration by repatriates (1994: 223,000 compared to 219,000 in 1993) - were once again the Russian Federation and Kazakstan. The number of Germans who left Germany in 1994 was 119,000 (1993: 87,000). Of those Germans who left the country most of them registered in another EU country (33,000 or 27.5 per cent). In total in 1994 the 296,000 Germans settling in Germany and 119,000 who left the country resulted in an immigration balance of 177,000 people.

Life expectancy

7. Life expectancy in 1992-1994 in Germany was 72.8 years for men and 79.3 years for women. In 1986-1988 the average life expectancy for men was 71.7 and 78.0 years for women (by means of comparison 1900: 44.8 years for men and 48.3 years for women).

Infant mortality

8. In 1990 infant mortality (deaths in the first year of life) reached 7.0 infant deaths per 1,000 live births, one fifth of the 1960 level. This mortality rate is continuing to decrease and was 5.6 in 1994. In detail the infant mortality rate developed as below:

1960:	35.0
1970:	22.5
1980:	12.4
1990:	7.0
1991:	6.7
1992:	6.1
1993:	5.8
1994:	5.6

Maternal mortality rate

9. Number of maternal deaths per 100,000 live births

1990:	9.1
1991:	8.7
1992:	6.7
1993:	5.5
1994:	5.2

Fertility rate

10. In 1994 the fertility rate was 1.24 children per woman of child-bearing age. In 1990 it was 1.45 children.

Proportion of people under 15 years of age and over 65 years of age

11. In 1994 the proportion of the population under 15 years of age was 16.3 per cent and the proportion of those over 65 years of age was 15.4 per cent.

Rural and urban population

12. The rural area comprises approximately 34 per cent of the area of Germany. Some 16 per cent of the population live there.

Single mothers

13. Of 15,141,000 working women, 6,167,000 of them are single; 1,237,000 of the single women are single parents (April 1994).

Illiteracy rate

14. There is no reliable information on the exact number of illiterate people. According to UNESCO estimates it is probably between 468,667 and 1,847,666 people. With a population over 15 years of age of approximately 62,489,000 (1991), that is 0.75 per cent to 3 per cent of the adult population.

Proportion of the population with foreign nationality

15. At the end of 1995 the foreign population was 7,173,866. The larger groups of these are primarily nationals of the following States:

EU States	1,808,411
(including Italy	586,089
and Greece)	359,556
Turkey	2,014,311
Former Yugoslavia	1,359,212
Poland	276,753
Romania	109,256

At the end of 1994 (the figures for the total population in 1995 are not yet available) the proportion of foreigners in the total population was 8.6 per cent (1994 total population: 81,538,603; 1994 foreign population: 6,990,510). Of the 7,173,866 foreigners resident in Germany at the end of 1995, 1,075,765 had come to Germany as asylum-seekers. 704,069 people had already gone through a binding asylum procedure (of whom 156,563 were recognized as entitled to asylum). 371,696 are still in the process of the asylum procedure.

Religions

16. According to the population census of 27 May 1987 the following proportions of the population belong to religious communities in the 11 old Länder (population: 61,077,042):

Roman Catholic church	42.9 %
Protestant church	41.6 %
Free Protestant churches	0.6 %
Jewish religious community	0.05 %
Islamic religious community	2.7 %
Other religious communities	2.0 %
No religious community	8.0 %

C. Economy

Gross domestic product (GDP), gross national product (GNP)

17. Gross domestic product

1995: DM 3,459.0 billion	1994: DM 3,320.3 billion
in the 11 old Länder:	1995: DM 3,081.0 billion
	1994: DM 2,973.4 billion
in the five new Länder and the territory of the former East Berlin:	
1995: DM 378.0 billion	1994: DM 346.9 billion
GDP per employed person	
old Länder 1995: DM 108,300	1994: DM 103,800
new Länder 1995: DM 58,900	1994: DM 55,000
GDP per employed person	
old Länder 1995: DM 46,600	1994: DM 45,200
new Länder 1995: DM 24,400	1994: DM 22,300

18. According to the first provisional calculations of the Federal Statistical Office the gross domestic product, the value of the work done in Germany, increased in 1995 in comparison to 1994 by 1.9 per cent in real terms, after it had increased by 2.9 per cent in 1994 in comparison to 1993 and fallen by 1.2 per cent in 1993. The German economy lost momentum in 1995.

19. Whereas the gross domestic product in the former Federal territory increased by 1.5 per cent in real terms in 1995 (after - 1.8 per cent in 1993 and + 2.4 per cent in 1994), the gross domestic product in the new Länder and the former East Berlin rose sharply once again by 6.3 per cent (after + 7.2 per cent and + 8.5 per cent in the two preceding years). Economic growth in both areas was thus somewhat slower than in 1994.

20. Gross national product 1995: DM 3,449.5 billion (1994: DM 3,312.4 billion). In 1995 it was DM 42,200 per inhabitant in Germany.

21. The total German gross national product, which can be differentiated from gross domestic product by the balance of trade and wealth income between German residents and the rest of the world, rose in 1995 at exactly the same level as the gross domestic product, i.e. 1.9 per cent in real terms.

Employment

22. The proportion of employed people in the population was 53.1 per cent in 1994 (in EU as a whole: 48.7 per cent).

23. The proportion of women among employed people was 44.4 per cent in the same year (in the EU as a whole: 38.5 per cent).

Unemployment

24. The economic situation in Germany is also reflected in the labour market. With the improved economic situation, the fall in the number of people in employment slowed down. In 1995 34.8 million people were employed in Germany, that is approximately 104,000 (0.3 per cent) fewer than in 1994 (following a reduction of 260,000 in 1994 in comparison with 1993). The number of registered unemployed fell in 1995 in comparison with 1994 by 74,440, or 2.3 per cent, to 3.6 million. In 1994 the number of unemployed had risen by 8.1 per cent on 1993.

25. The unemployment rate, in relation to the dependant civilian employed persons, was 9.3 per cent in 1995 in the old Länder (1985: 9.3 per cent; 1991: 6.3 per cent; 1992: 6.6 per cent) and in the new Länder and the territory of the former East Berlin 14.9 per cent in 1995 (1991: 10.3 per cent; 1992: 16.1 per cent; 1993: 15.8 per cent; 1994: 16.0 per cent). In total the 1995 unemployment rate was 10.4 per cent in comparison with 10.6 per cent in 1994.

Inflation rate

26. The cost of living index in all private households in the 11 old Länder in comparison to previous years developed as below:

1980:	5.4 %	1988:	1.3 %
1981:	6.3 %	1989:	2.8 %
1982:	5.3 %	1990:	2.7 %
1983:	3.3 %	1991:	3.5 %
1984:	2.4 %	1992:	4.0 %
1985:	2.0 %	1993:	3.6 %
1986:	-0.1 %	1994:	2.7 %
1987:	0.2 %	1995:	1.7 %

27. In the five new Länder and the territory of the former East Berlin the cost of living index in private households was:

1992:	13.5 %
1993:	10.5 %
1994:	3.7 %
1995:	2.1 %

Assets and liabilities

28. In June 1995 the Federal Republic of Germany had DM 2,300,483 million in assets and DM 2,016,706 million in equity and liabilities; public bodies had DM 134,956 million in assets and DM 541,011 million in equity and liabilities.

Disposable income

29. The overall disposable income per inhabitant in 1994 in Germany was DM 34,600.

30. The disposable income of private households per inhabitant in Germany in 1994 was DM 26,400.

Social assistance benefits

31. Social assistance is governed by federal law in Germany. It forms the lowest network of social security. The priority task of social assistance is to enable the recipient to lead a life corresponding to accepted standards of human dignity. The prerequisite for social assistance is the fact that the recipient cannot help himself or does not receive assistance from other parties, in particular family members, or other social benefits. Social assistance comprises two types of assistance: benefits to help with living expenses and assistance in particular circumstances. Benefits to help with living expenses are paid to people who cannot afford to keep themselves from their own resources, particularly income and savings. The level of benefits to help with living expenses has risen considerably since the Federal Social Assistance Act came into force in 1962. The second large area of social assistance benefits covers the special needs of specific groups of people in particular circumstances (e.g. sickness benefit, integration assistance for the disabled and help with long-term care).

32. According to the provisional calculations of the Federal Statistical Office Germany spent DM 49.6 billion on social assistance benefits in 1994; DM 17.0 billion (34 per cent of expenditure) covered benefits paid to help with living expenses while the remaining DM 32.6 billion (66 per cent) went for assistance in particular circumstances.

33. At the end of 1993 2,450,000 people in Germany were receiving benefits to help with living expenses. This is an increase of 4.8 per cent (previous year's increase: 15 per cent). The number of recipients of assistance for particular circumstances remained practically unchanged from the previous year at 1.9 million people.

Promotion of education

34. Pupils at institutes of further education and technical colleges as well as students at universities receive assistance according to the Federal Education Promotion Act (Bundes-ausbildungsförderungsgesetz) if the funds required for their living expenses and education are not available from other sources. The promotion of education is a key element of the equalization of family burdens, by means of which the State aims to equalize social differences. The obligation to create equality of opportunity is a constitutional principle laid down in the social State principle of the Basic Law.

35. In 1994 693,000 pupils and students in Germany received assistance under the Federal Education Promotion Act. That was 78,000 or 10.2 per cent fewer than in the previous year. However, in many cases this assistance was not for a full year. On average 467,000 people per month received assistance. In the new Länder 145,000 pupils and students (20.9 per cent of all those receiving grants) received educational assistance. In the old Länder the number of recipients fell by 49,000 (8.2 per cent) to 548,000.

36. In 1994 the Federation and the Länder spent DM 3.1 billion on grants under the Federal Education Promotion Act, DM 458 million less than in the previous year. DM 651 million were provided for assistance for pupils at school and DM 2.46 billion for assistance for students. A pupil with a grant received on average DM 485 and a student with a grant DM 577 per month. In the new Länder the grant for pupils fell by DM 19 per person per month and that of students by DM 27 in comparison to the previous year.

37. Assistance is also available for the vocational training of young people. At the end of 1992 almost 50,000 young people were receiving vocational training remuneration. Over 70,000 young people started training schemes in 1992 preparing them for professional life. Almost 77,000 young people were helped in 1992 by aid accompanying their training or by training in supra-company institutions. The expenditure for encouraging vocational training was DM 1,740,000,000 in 1992 and DM 2,150,000,000 billion in 1993.

II. General political structure

A. History

38. The history of Germany as a constitutional State which guarantees its citizens basic and human rights starts with the constitutions of the individual German states enacted at the beginning of the nineteenth century. Until the end of the seventeenth century Germany had played only a minor role in the development of the philosophy of basic rights. German natural law of the eighteenth century - mainly influenced by Christian Thomasius and Christian Wolff - also viewed State power primarily as a fair, non-capricious power dedicated to the common good. It was subject, or morally bound, to the limits of natural law, but was not the target of innate basic rights of human beings.

39. The basic rights based on the example set by the Charte Constitutionnelle of Louis XVIII included in the Bavarian and Baden Constitutions of 1818 and

the Württemberg Constitution of 1819 were conceived as civil rights, which - intensified by the legislative rights of participation by the representative bodies of the people - were designed to limit the absolute power of the monarch. Among other things, this included the right to equal access to public offices, the right to be legally judged, the prohibition of expropriation without compensation, the freedom of conscience, the independence of clerical powers, the freedom of the press, the equality of the ranks, the exclusion of serfdom, the security of the individual and property, the exclusion of unlawful persecution and arrest, the equality of the Christian religious communities and the freedom to emigrate. The inadequacies of the German Confederation, in which the rivalry between Prussia and Austria prevented any further development, and the inability to act of the monarchical governments of the individual states led to a strong national unity movement with the aim of an overall German constitution.

40. In the spirit of the declaration of human and civil rights made by the French National Assembly on 26 August 1789, the National Assembly in the Paulskirche (St. Paul's church) in Frankfurt, a result of the bourgeois revolution of 1848, announced a catalogue of basic rights within the framework of the Paulskirche Constitution. This was supposed to serve as a model for the constitutions of the individual states and actually did so in some cases - in spite of the failure of the 1848 revolution. However, some states, such as Bavaria, Hanover, Austria and Prussia, withdrew from the Reich Constitution of 28 March 1849; once the authority of the Frankfurt National Assembly had been swept aside upon the action of the reinforced monarchies and the Bundestag (parliament) of the old German Confederation had been reinstated, in 1851 the latter declared the basic rights to be legally invalid. It obliged those states in which the Paulskirche Constitution had taken effect to invalidate these provisions. After the brief transitional period of the North German Confederation (1867-1870), its expansion after the accession of the Southern German states in November 1870 led to the founding of the German Empire on 18 January 1871. The Constitution of the German Reich provided for a federal State with a constitutional monarchy. Just as the Reich was not the result of a national mass movement, the Constitution did not come about on the basis of popular sovereignty. The power of the Reich was borne by the total of the allied governments represented in the Bundesrat, which in turn were determined by the Princes of the member states.

41. Once the monarchy had come to an end after the abdication of Kaiser Wilhelm II and the "German Republic" was proclaimed from the Reichstag building, the newly elected National Assembly adopted the Weimar Constitution, which entered into force on 14 August 1919. The Weimar Constitution was made up of an organizational section and a basic rights section in which, however, the "Basic Rights and Duties" of German citizens applied only in line with and within the framework of the legislation. The Weimar Reich Constitution provided for a democratic republic with presidential and parliamentary elements. The authority of the State was vested in the people. The Reich remained a federal State in which the authority of the State was divided among the Federation and the constituent states. The Länder were newly divided and were given fewer powers. However, the Constitution did not provide any effective methods to protect the free and democratic order. This made it easier for the opponents of democracy and freedom to overcome the constitutional order as a result of the Depression, which started in 1929.

This culminated in the dictatorship of the National Socialist regime in 1933. The Reichstag went up in flames as a result of arson on 23 February 1933. This event served as a pretext for the National Socialists to issue the emergency ordinance of the Reich President to protect the people and the State, which came into force as early as 27 February 1933. With this instrument the Reich President actually curtailed certain rights, particularly the freedom of opinion and the freedom of the press, and thus ended the guarantees of a State based on the rule of law of the Weimar Republic. The "Enabling Act" of 24 March 1933 completely removed the division of powers between the Reich Government and the Reichstag. Now the Reich Government could pass ordinary Acts and Acts that changed the Constitution. In the next stage, the federal structure of the Reich, which was divided into Länder, was dissolved and the creation of the united State was complete. The end of this regime with the capitulation of the German Wehrmacht (army) on 8 May 1945 enabled the return to a constitution based on the respect of human rights on the territory of the Federal Republic of Germany.

42. In 1948 the Parliamentary Council met to draw up a new Constitution: the Basic Law of the Federal Republic of Germany. The Parliamentary Council was made up of 65 representatives of the Länder who had been elected by the Land parliaments of the 11 Länder in the 3 Western zones of occupation. It followed the lines of the Weimar Constitution of 1919 but was also guided by the experience that had been gained with this Constitution between 1919 and 1933. The Basic Law is therefore a response to historical development. The creators of the Constitution also took their lead from the Universal Declaration of Human Rights of the United Nations of 10 December 1948. The Basic Law was proclaimed on 23 May 1949 and entered into force at midnight on that date. By contrast, the development in the eastern part of Germany was characterized by endeavours to achieve a permanent division of the states, injustice and flouting of the human right to freedom. There the Soviet occupying power and, with its assistance, the Social Unity Party of Germany (Sozialistische Einheitspartei Deutschlands - SED) attempted to set up a regime in line with their ideas of a social and political system. The Constitution of the German Democratic Republic (GDR), founded in 1949, paid lip service to the basic rights; however, it did not really guarantee individual freedom and defensive rights against the State's powers. The centralized structure of the State, a rejection of the principle of the division of powers and the subjugation of State functions to the leadership of the SED all served to ensure the dominance of the SED against the will of the people. Political persecution, infringements of human rights and vigilant patrolling of its borders formed the public image throughout the world of the State system of the former GDR.

43. After the overthrow of the long-term GDR State Council Chairman Erich Honecker, pressure from the people led to the opening of the Berlin Wall and other border crossings on 9 November 1989. Following the first free elections to the Peoples' Chamber in East Berlin on 18 March 1990, negotiations were started between the Governments of the Federal Republic of Germany and the GDR with the aim of agreeing on the details of the unification of both partial states. The accession of the GDR to the Federal Republic of Germany was prepared in several stages. On 30 June 1990 the German-German Treaty of 18 May 1990 Establishing a Monetary, Economic and Social Union entered into force as did, on 3 September 1990, the German-German Agreement

of 3 August 1990 on the preparation and implementation of the first all German election to the German Bundestag. The reunification process was ensured as regards foreign policy with the Agreement of 12 September 1990 on the final regulations with respect to Germany, the so-called "Two Plus Four Treaty" which was concluded between both German states, France, the Soviet Union, the United Kingdom and the United States of America. Finally, the comprehensive Unification Treaty of 31 August 1990 stipulated the modalities for State unification. Prior to this the Peoples' Chamber in East Berlin had already proclaimed, on 23 August 1990, accession of the GDR to the area of application of the Basic Law of the Federal Republic of Germany with effect from 3 October 1990. The Länder Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia, which had been abolished in 1950 with the conversion of the GDR into a united State and replaced by administrative areas, were reintroduced with effect from 3 October 1990 by a statute of the GDR of 22 July 1990.

B. The political framework

44. The Basic Law of 23 May 1949 continues to be the Constitution of the Federal Republic of Germany even after the achievement of German unity on 3 October 1990. However, on 16 January 1992 a Joint Constitutional Commission, comprising members of the Bundestag and the Bundesrat, was established which, in line with article 5 of the Unification Treaty, was entrusted with drawing up proposals in response to the questions on amending or supplementing the Basic Law as a result of German unity. The Bundestag and the Bundesrat largely accepted the recommendations of the Commission in the Amending Act adopted on 27 October 1994. Of the new elements, the new formulations of articles 72, 74, 75, 93 (1) subparagraphs 2a and 125a of the Basic Law, which aim to increase the legislative powers of the Länder, are particularly important. Furthermore, the Basic Law was also supplemented by the national objective of environmental protection (art. 20a).

45. The Basic Law determines the political framework for action and organization of the State. The fundamental elements or structural principles of the constitutional law governing the organization of the State are:

- Republic;
- Democracy;
- State based on the rule of law;
- Federal State;
- Social State.

1. Republic

46. The republican structural principle is characterized by the rejection of the State form of monarchy: the head of State is elected.

The Federal President

47. The highest representative of the Federal Republic of Germany is the Federal President. He or she is elected for five years by the Federal Assembly which is made up of members of the Bundestag and an equal number of members elected by the Land parliaments.

48. The principle powers of the head of State under constitutional law are to carry out functions to represent, integrate and embody the State in addition to certain extraordinary powers in crisis. The Federal President represents the Federal Republic of Germany at home and abroad, signs the federal laws and proclaims them, nominates and dismisses the Federal Chancellor, federal ministers, federal judges, federal civil servants and officers and non-commissioned officers. He can dissolve parliament in certain special situations as well as being able to declare a legislative state of emergency. However, the actual running of the State is the responsibility of the Federal Government. The position of the President as the head of State is not, thus, a counterbalance to the parliament or the Federal Government. On the whole, the office is designed for reticence, neutrality and political integration.

2. Democracy

49. All State authority shall emanate from the people and is subject to control by the people. The structural principle of democracy under the Basic Law is designed as indirect, representative or parliamentary democracy. Every four years the representatives to the German Bundestag are elected by means of general, direct, free, equal and secret suffrage. The members of the Bundestag are representatives of all the people and are not bound by orders or instructions and are only subject to their consciences. Parliament has comprehensive legislative rights and supervises the government. The deciding principle is the principle of majority. However, a certain degree of protection of minorities is also part of democracy, e.g. the right of minorities to be heard in parliament, the possibility of political opposition and the change of power.

The political parties

50. The political parties play a decisive role in shaping political will and letting the people develop an informed opinion constitutionally, with the result that the German form of democracy is frequently called a party democracy. The parties are not part of the organized State. They cannot be identified with the State or with the people but are independent factors of constitutional life that adopt an intermediate role between both.

51. Parties may be freely established. However, their internal organization must correspond to democratic principles. Parties that intend to impair or dispense with the free democratic basic order can be banned by the Federal Constitutional Court. The parties are financed by members' contributions and donations. They must publish information about this regularly. In addition to this, they also receive financial aid from the State so that they can fulfil their tasks.

52. The parties do not just act at a federal level. They are also involved in elections to the parliaments of the Länder and local government. The party spectrum comprises, among others, the following parties represented in the German Bundestag: the Christian Democratic Union of Germany (Christliche Demokratische Union Deutschlands - CDU) and the Christian Social Union in Bavaria (Christliche Soziale Union in Bayern e.V. - CSU), the Social Democratic Party of Germany (Sozialdemokratische Partei Deutschlands - SPD), the Free Democratic Party (Freie Demokratische Partei - F.D.P.), Alliance 90/Greens

(Bündnis 90/DIE GRÜNEN - Grüne) and the Party of Democratic Socialism (Partei des Demokratischen Sozialismus - PDS). Furthermore, local public life in many places is also influenced by independent groupings of voters.

The Bundestag

53. The parliament of all the people is the German Bundestag which currently comprises 672 representatives. 328 representatives are elected directly according to the principle of first past the post voting; another 328 representatives receive their mandate according to the principle of proportional representation: the seats are distributed in proportion to the votes cast for the Land lists of the parties (second votes). Sometimes so-called excess mandates can arise (currently 16), resulting in an increase in the total number of legal mandates. However, when the seats are allocated - with the exception of a special ruling for the first all-German election in 1990 - only those parties are taken into account that received at least 5 per cent of all second votes cast in the election area or have received at least three constituency mandates directly. Parties that remain below the 5 per cent threshold are not represented in parliament in principle. This is intended to counteract party splitting which could endanger the scope for action and the stability of the government, as occurred during the Weimar Republic. The Bundestag elects the Federal Chancellor who then has the sole right to nominate federal ministers.

The Federal Government

54. The Federal Chancellor and the federal ministers form the Federal Government. The Federal Chancellor determines policy direction and bears the responsibility for it. Within these directions, each federal minister heads his or her portfolio independently and bears responsibility for it.

55. The Bundestag can express no confidence in the Federal Chancellor only by electing a successor with a majority of its members and requesting the Federal President to dismiss the Federal Chancellor.

3. State based on the rule of law

56. The structural principle of the State based on the rule of law binds all State powers to adhere to law and justice, especially basic rights. The executive and judicial powers are bound by legal norms of every type, even unwritten law (common law, general legal principles). The legal norms have priority over all other State acts. A special form of this priority of the law applies to the principle of the priority of the Constitution, according to which no State act may contradict the Constitution. Even parliament itself, the democratically elected representative of the people, is bound by the constitutional order. This binding of parliament to the Constitution was a central concern of the creator of the Basic Law. Even the author of the Constitution is bound to a core of basic constitutional principles which cannot be amended.

57. Further elements of the principle of a State based on the rule of law are the independence of the judiciary and the possibility of legal protection in court for everyone whose rights are violated by public authorities, the

setting up of constitutional jurisdiction, the constitutional precept of legal security and the proportionality of means and ends in State acts which encroach upon the rights of individuals. The principle of the State based on the rule of law helps to ensure the impartial execution of State power and to protect the State and the law from becoming mere instruments of political dictators. As a counter-principle to the dynamism of the democratic political process, the principle of a State based on the rule of law aims for continuity and stability.

Jurisprudence

58. In the system of the State based on the rule of law with a division of powers, jurisprudence is given a particularly strong position by the Basic Law. It is entrusted to independent judges who are subject only to the law. During their periods in office judges cannot in principle be dismissed or transferred. Judicial power is divided into ordinary jurisdiction (civil and criminal jurisdiction) and four specialist jurisdictions: labour jurisdiction, general administrative jurisdiction, social jurisdiction and finance jurisdiction. Ordinary jurisdiction has a four-tiered structure in the Länder and the Federation. Within the specialist jurisdictions there are two courts at Land level (with the exception of the finance jurisdiction) and at federal level the third - highest - instance of the federal courts. In addition to the five specialist jurisdictions there is the Federal Patents Court as well as the organs of disciplinary jurisdiction and the jurisdiction of tribunals. The latter primarily deal with infringements of duty which someone may have committed in their capacity as a civil servant, judge or soldier or in connection with the membership of a legally regulated profession (e.g. lawyers, tax consultants, accountants, architects, doctors, veterinary surgeons and pharmacists).

59. In addition to this, constitutional jurisdiction is exercised by the Federal Constitutional Court at federal level and the Land Constitutional Courts at Land level. It is outside the instances of the specialist courts and deals only with infringements of specific constitutional law.

Federal Constitutional Court

60. The Federal Constitutional Court comprises two panels with eight judges each. The period of office of the judges is 12 years or until age 68. Re-election is not possible. The judges of a panel are elected by the Bundestag and the Bundesrat equally by means of a qualified majority.

61. The Federal Constitutional Court only becomes active when it is called on. It exercises its duty as the highest guardian of the Constitution in various ways. It supervises parliament to see whether, in issuing laws, it has acted according to the provisions of the Basic Law in form and substance. Complaints of unconstitutionality may be submitted to the Federal Constitutional Court by anybody claiming that his or her basic rights have been infringed. The Court monitors authorities and courts to see whether they have observed the Constitution in their actions and decisions. It arbitrates in disagreements between the highest State organs and decides in proceedings between the Federation and the Länder. Furthermore, it also decides,

among other things, on the validity of Bundestag elections and the unconstitutionality of political parties as well as on the forfeiture of basic rights.

4. Federal State

62. The Federal Republic of Germany is a federal State consisting of 16 Länder: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North-Rhine/Westphalia, Rhineland-Palatinate, the Saarland, Saxony, Saxony-Anhalt and Thuringia.

63. The Länder are members of the Federation. The Länder Constitutions must comply with the principles of the republican, democratic and social State under the rule of law in the meaning of the Basic Law. In this framework, the Länder are states with their own constitutions, parliaments and governments, and are even entitled to conclude international agreements with foreign States - that said, they are only permitted to do so with the consent of the Federation.

64. The Länder are bound by federal legislation - federal law stands before Länder law. The Basic Law contains comprehensive lists of competences with regard to those areas where the Federation is allowed to pass legislation. These include almost all important areas of life. Some of the areas where legislation originates in the Länder are: culture (schools, wide sections of higher education, radio and television), communal self-administration and the police.

65. In the last few decades, there has been a shift of emphasis in legislation further and further towards the Federation. In the organization of the justice system and the implementation of all statutes, the emphasis is, however, clearly on the Länder. The federal model thus lives on the tension between a unitarian tendency on the one hand and a federal tendency on the other. Not only does the Federation have an effect on the Länder, but the Länder have an effect on events in the Federation. Via the federal organ of the Federal Council (Bundesrat), the Länder contribute to the legislation and administration of the Federation, and in matters concerned with the European Union.

66. The federal principle combines a decentralized State structure with a vertical division of powers, which supplements the classical division between legislative, executive and judicial powers. By dividing these competences between the Federation and the Länder, independent areas of competence, and thus of responsibility, are created.

The Federal Council (Bundesrat)

67. The Länder are involved through the Federal Council in legislation and administration of the Federation, as well as in forming a consensus with regard to matters concerned with the European Union. The Federal Council consists of members of the Länder governments who are subject to instructions. The number of votes available to a Land depends on the number of residents in that Land. With regard to participation in the legislative procedure, one

should differentiate between so-called objection laws and consent laws. The positive consent of the Federal Council is required for the creation of the latter. With regard to the former, the Federal Council is able to file an objection, but the Federal Parliament may reject it.

68. The relationship both between the Federation and the Länder, and that between the Länder themselves, is generally characterized by cooperation, so that it is possible to speak of cooperative federalism. Constitutionally institutionalized forms of cooperation consist in the so-called joint tasks performed by the Federation and the Länder. These include, for instance, improving the regional economic structure, supporting research and extension of the higher education system.

69. The federal principle guarantees cultural and regional variety. It ensures that it is possible for experiments to be carried out on a small scale and institutionalizes competition between the Länder. At the same time, it enables those who hold government posts in the Länder to formulate alternatives to the policy of the governing parties in the Federation. The path to power in the Federation is frequently via government power in the Länder. Often, the political balance is different at the federal level from that at Länder level. If the political majorities in the Federal Parliament and in the Federal Council disagree, because of the right of the Federal Council to participate in the legislative procedure the opposition can considerably influence the law-making ability of the governing parties and therefore, in the end, of the Federal Government. This is a consequence of the German-style federal structure which balances and controls power.

The communes

70. The communes have a strong position. They can be categorized as a specially structured part of the Länder administration, whilst at the same time possessing a guarantee of self-administration which is anchored in the Constitution. Communes are independent legal entities with their own laws, budget and staff. As communes, they have a right to self-administration. This means that they have a guaranteed right to settle all matters concerning the local community in their own competence and within the statutory framework. At the same time, the communes are the bottom rung of the general public administration in the Federation and the Länder. They are subject to the supervision of superior regional authorities and of the Land.

Allocation of finances

71. In order to guarantee the financial independence of the Federation and the Länder, the Basic Law ensures that they are provided with sufficient funds, primarily by dividing the various sources of income from taxes. The Federation and the Länder jointly receive income tax, corporate income tax and turnover (value added) tax, which make up approximately 70 per cent of all taxes levied. The Federation alone has the right to most excise duties (such as mineral oil tax, tobacco tax, coffee tax), insurance tax and the supplementary tax on personal and corporate income tax. The Länder alone receive, inter alia: income from property tax, gift/inheritance tax, road tax, land acquisition tax and beer tax. The local authorities keep for themselves income from trade tax, land tax and other local authority taxes

such as income from dog licences. They are also entitled to a portion of the income tax gathered. In addition, the Basic Law contains a special system of regulations, such as the horizontal financial compensation system between the Länder and supplemental federal allocations in order to compensate for differences in the financial capacity of the Länder subsequent to distribution of income from taxes.

5. The social welfare State

72. According to the structural principle of the social welfare State parliament has the prime obligation to ensure freedom from need, an existence worthy of human beings and suitable participation in the general prosperity. These are achieved through the concluding of social contracts and resolution of conflicts, the structuring of society via State planning, the provision of services for the public, and social and economic progress. However, the principle of the social welfare State is not intended to do away with all inequalities, nor does it contain any general obligation to maintain the status quo. The primary aim is to deal with situations of social need and disadvantage, such as those caused by illness, age, disability, unemployment and other disadvantageous circumstances. The social limitation of property also flows from the principle of the social welfare State. The inclusion of this principle in the Basic Law constitutes a decision to guarantee the social human rights by means of an instruction to parliament regarding political structure. This principle does not compete with the other four structural principles, but rather the principles are structured in such a way as to supplement and limit each other.

III. GENERAL STATUTORY FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Implementation of human rights in Germany

1. The list of basic rights contained in the Basic Law

73. The basic rights contained in the Basic Law are primarily rights to freedom, protecting the individual from State interference in his or her freedom. At the same time, they present the picture of a person who can develop freely within society and whose individuality, independence, self-determination and responsibility for his or her own actions are to be respected by the State. The picture of a person which is painted by the Basic Law is not that of an isolated, sovereign individual, but of an individual drawn into society and bound to it, without damage to his or her integral value.

Rights to freedom

74. The list of basic rights contained in the Basic Law is headed by the obligation placed on all State powers to respect and protect the dignity of man (art. 1, para. 1). The basic rights are guaranteed for all, except for those civil rights reserved for German nationals.

75. General human rights are constituted in particular by the right to free development of the personality (art. 2, para. 1), the right to life and to

physical integrity, as well as to individual freedom (art. 2, para. 2), the right to equal treatment, including equal rights of men and women in all areas of law (art. 3), the right to freedom of faith, of conscience, and freedom to profess a religion (art. 4) including the right to refuse, on grounds of conscience, to perform military service, as well as the right freely to express and disseminate opinions and freely to inform oneself, which includes guaranteeing freedom of the press (art. 5). Special guarantees advantageous to marriage and the family, as well as to the school system, are contained in articles 6 and 7. Article 9, paragraph, 3 guarantees "to everyone and to all occupations [...] the right to form associations to safeguard and improve working and economic conditions".

76. Outside the area governed by article 9, paragraph 3, the freedom of assembly and association, supplemented by the right to form political parties, is guaranteed to all German nationals by means of article 8, as well as by article 9, paragraph 1, article 21, paragraph 1, second sentence of the Basic Law, as is the right to freedom of movement (art. 11) and the basic right freely to choose an occupation and place of work (art. 12).

77. Irrespective of nationality, article 10 ensures the inviolability of privacy of letters, posts and telecommunications and article 13 that of the home. Property enjoys protection under articles 14 and 15. Pursuant to article 16, no German national may be deprived of German citizenship or extradited to a foreign country. Pursuant to article 16 a, those who are politically persecuted have a right to asylum. Article 17 gives to everyone the right to address complaints to the competent agencies and to parliament.

78. Apart from the basic rights standardized in the first section of the Basic Law in articles 1 to 19, a number of other rights are protected in the same way as basic rights. In detail, these are the right to resist any person seeking to abolish the constitutional order (art. 20, para 4), the enjoyment of political rights pursuant to article 33, the active and passive right to elect (art. 38), and elementary guarantees of court procedure (basic judicial rights): the right to be legally judged (art. 101), the right to a hearing in accordance with the law, the ban on retroactive punishment and on repeated punishment (art. 103), as well as legal guarantees in the event of deprivation of liberty (art. 104).

79. For many of the rights which have been mentioned, there are parallels in the Universal Declaration of Human Rights, but not in the International Covenant on Civil and Political Rights (e.g. protection of property). Others, such as the right to refuse, on grounds of conscience, to perform military service, and the right of asylum, go beyond the International Covenant and the Universal Declaration.

Economic rights

80. The freedom of the individual to engage in economic activity is protected under article 2, paragraph 1, as well as 11, 12 and 14, of the Basic Law. Article 2, paragraph 1, and 12 concern entrepreneurial freedom in the actual sense of the term. Article 14 protects not only the fact of owning property, but also the use of this position, as well as the sale or disposal of

property. The freedom to exercise an occupation in the entrepreneurial area is protected by article 12, paragraph 1, whilst article 11 grants the right to take up residence anywhere on German territory.

Cultural rights

81. The freedom of art and science (research and teaching) is guaranteed by article 5, paragraph 3, of the Basic Law. These rights to freedom are not subject to any statutory restriction. This paragraph contains first of all a right to freedom for all artists and all those who participate in the performance and dissemination of works of art from intervention by public power in the area of art. At the same time it sets the modern State, which regards itself as a cultural State, the task of maintaining and encouraging a free cultural life.

Social rights

82. The principle of the social welfare State emerges from articles 20, paragraph 1, and 28 paragraph 1 of the Basic Law. It obliges the State to engage in social, political and welfare activity, and to create social justice. It prohibits State abstinence in the social area, whilst intersecting with the rights to freedom.

83. The principle of the social welfare State is given concrete form by several provisions on fundamental rights. In areas which are both important to life and which are basic, the obligation incumbent on the State to provide protection becomes a commandment to act in compliance with the principles of the social welfare State. Article 20, paragraph 1, in conjunction with article 1, paragraph 1, and article 2, paragraph 1, of the Basic Law obliges the State to ensure an existential minimum to those who are in need, especially the sick and those unable to earn a living or to find work.

84. The duty of the State to provide protection for marriage and the family, as well as to protect mothers (art. 6 para. 1 and art. 4 of the Basic Law), and that incumbent on parliament to provide children born out of wedlock with the same conditions for their physical and mental development and for their place in society as those born in wedlock (art. 6, para. 5) influence social law.

85. The general principle of equality of treatment contained in article 3, paragraph 1, that of equal rights of men and women (para. 2), linked to the obligation incumbent on the State to further the actual implementation of the equality of men and women and to aim to abolish existing disadvantages, as well as the prohibition of discrimination in paragraph 3, which states that no one may be disadvantaged or favoured because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions, also have an effect in the social area. No one may be discriminated against because of a disability.

86. In the area of labour and professional law, the right guaranteed in article 9, paragraph 3, of the Basic Law to form associations to safeguard and improve working and economic conditions (freedom of association and tariff

autonomy) is of particular significance, as is the right rooted in article 33, paragraph 2, to equal eligibility for any public office, especially according to aptitude.

Further development of basic rights

87. The basic rights contained in the Basic Law are given concrete form and further developed in the decisions taken by the domestic courts, especially by the Federal Constitutional Court. An example of the further development of the basic rights is the right to freedom of information derived from the right to free development of the personality in conjunction with article 1 of the Basic Law, which constitutes an answer in terms of basic rights to modern data-processing.

Relationship between basic rights and human rights

88. The international Conventions providing protection of human rights as they are formulated in general terms in article 2, paragraph 1, of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights place obligations on States. By their ratification the Covenants have become an integral part of German law. The content and state of development of each human rights convention is to be taken into account in interpreting the Basic Law, determining the content and range of the principle of the rule of law and of the basic rights, as well as in interpreting the ordinary statutes. At the same time, they provide important proposals and impulses for national legislation.

Basic rights in the European Union

89. In so far as Germany has transferred sovereign powers to the European Union on the basis of article 24, paragraph 1, and of article 23, paragraph 1 (added in December 1992) of the Basic Law, the basic rights are protected against legal acts of the Union primarily by decisions of the European Court of Justice in Luxembourg. The Maastricht Treaty on European Union now expressly refers to human rights (art. F, para. 2): "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law."

2. Maintaining basic rights

90. The Basic Law may only be amended by a qualified majority. In view of the experience of the arbitrariness and violence which reigned under National Socialism, those who created the Basic Law saw to it that the free, democratic basic order cannot be removed by parliament. Inter alia, article 79, paragraph 3, declares amendments to the Basic Law to be inadmissible if they affect "the basic principles laid down in articles 1 and 20". These basic principles also include the acknowledgement of "inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world." (art. 1, para. 2). Furthermore, the basic decision taken in article 20 opting for a republican, democratic and social federal State based on the rule of law is not subject to amendment.

91. Furthermore, basic rights may only be subject to the restrictions specified in the Basic Law itself and only to the extent stated therein. In any case, parliament is prohibited from encroaching on the essence of a basic right (art. 19, para. 2).

3. Implementation of domestic basic rights

92. The basic rights contained in the Basic Law are directly enforceable and binding on the legislature, the executive and the judiciary (art. 1, para. 3). Independent courts ensure protection of these rights. Article 19, paragraph 4, grants to any person whose basic rights have been violated by State power the right of recourse to the courts.

93. The basic rights show their effect on the application of statutes by the fact that the statutory provisions must be interpreted in the light of the constitutionally protected basic rights. As this applies to all statutes, the courts and authorities are continuously concerned with the protection of these rights in applying the statutes. Respect of basic rights is thus not only at the heart of the written Constitution, but also of State activity in practice. Consequently, in Germany basic rights have attained an unusually high degree of effectiveness.

94. The decisions of the Federal Constitutional Court contribute to this by maintaining the standard of basic rights and thus further developing the interpretation of the Constitution. The decisions taken by the Court are binding on the constitutional bodies of the Federation and the Länder, as well as on all courts and authorities, and have the force of law subsequent to more detailed statutory provision. The Federal Constitutional Court thus performs a central task in protecting basic rights.

95. The courts must examine ex officio whether the statutory provisions which they have to apply are in compliance with the basic rights protected by the Basic Law. Where a court considers that a statute on whose validity the court's decision depends is unconstitutional, pursuant to article 100, paragraph 1 of the Basic Law it must stay the proceedings and obtain a decision from the Federal Constitutional Court.

96. Because article 1, paragraph 3, of the Basic Law is also binding on parliament, those who assist in legislating must examine whether a bill which is in preparation is constitutional.

97. Where there are differences of opinion or doubts as to the constitutionality of statutory provisions, the Federal Constitutional Court takes a decision once the statute has been passed if the Federal Government, the government of a Land or one third of the members of the German Federal Parliament apply for it to do so.

Complaints of unconstitutionality

98. An important instrument serving the protection of basic rights is also the complaint of unconstitutionality pursuant to article 93, paragraph 1, No. 4 a, of the Basic Law. Once all legal remedies have been exhausted, any person may file a complaint of unconstitutionality by claiming that one of his

or her basic rights guaranteed by the Basic Law or one of the rights under article 20, paragraph 4, or articles 33, 38, 101, 103 or 104 has been violated by a State power. On principle, all sovereign acts of the legislature, the executive and the judiciary may be challenged by this extraordinary legal remedy. The complaint of unconstitutionality serves exclusively to protect basic rights and the constitutional rights which have the same standing as the former. As an extraordinary legal remedy, it is only admissible if the applicant has previously exhausted all other legal remedies in respect of the alleged violation of rights. Exceptionally, a complaint of unconstitutionality is admissible immediately, inter alia if there is no other legal remedy, for instance in the case of a statute which directly affects an individual's rights. A complaint of unconstitutionality is conditional on it being admitted for adjudication by the Federal Constitutional Court. It must be admitted if it is of fundamental constitutional significance or if it has been filed in order to implement basic rights or rights which have the same status as basic rights. This may also be the case if the applicant suffers a considerable disadvantage by a decision not being taken in respect of the matter.

Basic rights under civil law

99. The basic rights have been created primarily in order to protect the individual against the exercise of State power. Nevertheless, basic rights must be adhered to in interpreting and applying the non-constitutional law applicable between private individuals (indirect effect of basic rights on third parties). In reaching their decisions, judges must interpret statutes, particularly general clauses and uncertain legal terms, in compliance with the general value system of the basic rights.

Compensation

100. Under German law, there is no separate compensation system applying when basic rights are violated, but the general provisions apply. For instance, where any person in the exercise of a public office entrusted to him or her violates his or her official obligations to a third party, liability lies on principle with the State or with the public body employing him or her (art. 34, first sentence of the Basic Law, sect. 839 of the Civil Code [Bürgerliches Gesetzbuch]). The damaged party can demand compensation.

4. State bodies for the protection of human rights

101. Because of the comprehensive judicial protection, no State body has been created with general competence for the protection of human rights. Pursuant to the German legal system, on principle each person must claim violation of his or her rights. Assistance is provided by a highly developed network of legal professions and special interest groups. In individual areas, the Basic Law provides for special procedures and institutions such as petition committees serving to protect basic rights.

Right of petition

102. Pursuant to article 17 of the Basic Law, everyone has the right individually or jointly with others to address written requests or complaints

to the competent agencies and to parliaments. Anyone who submits a petition has a right to have it processed and to receive a reply. There are special petition committees in the Federal and Länder parliaments where members concern themselves with the matters brought forward by the petitioners. The following applies to the Federation, and the situation is similar in the Länder: in examining petitions, the Federal Parliament can request the Federal Government to provide information. This occurs particularly with complaints which are directed against acts or omissions of the Federal Government. Also in this way, the Federal Parliament can examine measures taken by the Federal Government. Here, the committee can demand information from the Federal Government and from the authorities, as well as hearing petitioners, witnesses and experts. In referring petitions to the Federal Government, the Federal Council may not give instructions, but may request that the petition be considered. The President of the Federal Parliament informs the sender of the decisions of the Federal Parliament with regard to his or her petition. In processing petitions, shortcomings in legislation or administration may come to light and be remedied by statutory provisions or administrative measures.

Commission pursuant to article 10 of the Basic Law

103. Article 10 of the Basic Law protects the privacy of letters, posts and telecommunications. The Federal Parliament has appointed a commission pursuant to article 10, paragraph 2, second sentence in order to maintain these rights. The commission examines and adjudicates on complaints relating to a violation of rights under article 10 by secret service surveillance.

Defence Commissioner of the Bundestag

104. By means of article 45 b of the Basic Law, a special control body has been created for the federal armed forces, the Defence Commissioner of the Bundestag. It is called upon by the Federal Parliament to safeguard the basic rights of soldiers and to assist the Federal Parliament in exercising parliamentary control. The Act on the Defence Commissioner (Gesetz über den Wehrbeauftragten) contains more precise provisions on appointment, legal position and tasks. He or she acts on instruction of the Federal Parliament or the Defence Committee for the examination of certain events. He or she is obliged to act ex officio on becoming aware of circumstances pointing to a violation of the basic rights of soldiers or of the principles of internal management. He or she must inform the Federal Parliament of his or her determinations by means of individual reports or in an annual report.

Federal Data Protection Commissioner

105. The task of the Federal Data Protection Commissioner is to monitor adherence by federal public agencies to the provisions of the Federal Data Protection Act (Bundesdatenschutzgesetz) and other provisions concerning data protection. The Act is intended to protect the individual from detriment to rights of privacy caused by the use of personal data. The Commissioner is independent in the exercise of his office and can only be released from duty at his own request or because of gross breach of duty. The Länder have made similar provision for data protection, in particular by appointing Länder commissioners.

Commissioners of the Federal Government

106. In the area of foreign policy, the Federal Foreign Office has appointed a commissioner for humanitarian aid and human rights at State secretary level in order to ensure uniform treatment of human rights questions and to maintain international contacts in this area.

107. The Commissioner for Human Rights Questions in the Federal Ministry of Justice is the agent of the Federal Government to the European Commission and the European Court of Human Rights in Strasbourg. He is also in charge of making observations to the United Nations Commission on Human Rights in proceedings pursuant to Economic and Social Council resolution 1503 and pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights. Regardless of the overall competence of the Federal Foreign Office in structuring and implementing human rights policy in foreign relations, he represents the Federal Government at the United Nations committees in respect of human rights questions.

108. The Federal Government Commissioner for the interests of foreigners supports the Federal Government in its efforts in respect of policy on foreigners and makes proposals for the further development of the policy of integration, including in the European framework. She is a contact for creating the conditions to enable Germans and foreigners to live together without tension. In particular, she should suggest and support initiatives for integration in the Länder and in local communities, as well as in groups within society, in order to further the mutual understanding of Germans and foreigners.

109. The Federal Government Commissioner for the interests of the disabled supports the Federal Government in its efforts to integrate disabled people into work, the professions and society, as well as being a contact for groups and individuals and acting in an advisory capacity with regard to the legislative activity of the Federation with regard to consideration of the interests of disabled people.

B. International agreements

110. In the area of human rights, the Federal Republic of Germany has in the main opened itself up to international control. It has acceded to the main human rights conventions and assumed obligations to protect these rights, as well as granted powers to international control agencies. These conventions in part provide for people being able to address complaints to these agencies directly. This applies in particular to the European Convention for the Protection of Human Rights and Fundamental Freedoms and to the Optional Protocol to the International Covenant on Civil and Political Rights.

111. The Federal Republic of Germany has ratified the following multilateral agreements:

International Labour Organization Convention No. 29 dated 28 June 1930 concerning Forced or Compulsory Labour;

International Labour Organization Convention No. 87 dated 9 July 1948 concerning Freedom of Association and Protection of the Right to Organize;

Convention dated 9 December 1948 on the Prevention and Punishment of the Crime of Genocide;

International Labour Organization Convention No. 98 dated 1 July 1949 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively;

European Convention dated 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms;

Convention dated 28 July 1951 relating to the Status of Refugees;

Convention dated 31 March 1953 on the Political Rights of Women;

Convention dated 28 September 1954 relating to the Status of Stateless Persons;

Convention dated 20 February 1957 on the Nationality of Married Women;

International Labour Organization Convention No. 105 dated 25 June 1957 concerning the Abolition of Forced Labour;

Agreement dated 23 November 1957 relating to Refugee Seamen;

International Labour Organization Convention No. 111 dated 25 June 1958 concerning Discrimination in Respect of Employment and Occupation;

Convention dated 15 December 1960 against Discrimination in Education;

Convention dated 30 August 1961 on the Reduction of Statelessness;

European Social Charter dated 18 October 1961;

Convention dated 6 May 1963 on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality;

International Convention dated 7 March 1966 on the Elimination of All Forms of Racial Discrimination;

International Covenant dated 19 December 1966 on Civil and Political Rights with two Optional Protocols;

International Covenant dated 19 December 1966 on Economic, Social and Cultural Rights;

Protocol dated 31 January 1967 relating to the Status of Refugees;

Convention dated 13 September 1973 on the Reduction of Statelessness;

Convention dated 18 December 1979 on the Elimination of All Forms of Discrimination against Women;

European Convention dated 28 January 1981 for the Protection of Individuals with Regard to Automatic Processing of Personal Data;

Convention dated 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

European Convention dated 26 November 1987 for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Convention dated 20 November 1989 on the Rights of the Child.

IV. INFORMATION AND PUBLICATIONS ON HUMAN RIGHTS

112. The Basic Law and the basic rights are covered in detail in school. Each pupil receives a copy of the Basic Law and of the Constitution of his or her Land.

113. The work of the Federal Central Agency for Political Education (Bundeszentrale für politische Bildung) is of particular significance. This agency distributes free of charge documentation and declarations of the United Nations and of the Council of Europe, as well as portrayals of the protection and support of human rights.

114. A collection of the texts of human rights conventions and other Council of Europe and United Nations documents has appeared as a supplement to the Federal Bulletin (Bundesanzeiger). The text of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols is also distributed in various languages, including German, by the Council of Europe in Strasbourg, and can be sent through the post on request. These texts are also available via the Federal Ministry of Justice.

115. Teaching materials in the area of human rights are supplied for non-school education by the German UNESCO Commission in Bonn.

116. In the context of the United Nations Conventions on human rights, for instance in the context of the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the Federal Government also distributes its reports, inter alia, in brochure form. The Federal Government's human rights report to the Federal Parliament is also available in brochure form.

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